Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	))))))))	Docket No. 96-128

COMMENTS OF THE INMATE CALLING SERVICE PROVIDERS COALITION

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SUMMARY

Section 276(a)(1) directed the Commission to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(a)(1). The Commission determined that "fair compensation" means the level of compensation set by the market. The Commission also made clear, however, that this is true only where the market is functioning properly: "where the market does not or cannot function properly . . . the Commission needs to take affirmative steps to ensure fair compensation." Specifically, the Commission has said it must address the issue of compensation where a "government-mandated rate . . . may not be high enough to be 'fairly' compensatory."

This is the case with inmate local collect calling rates, where state rate ceilings prevent inmate calling service ("ICS") providers from receiving fair compensation that reflects the unique costs of providing inmate collect calling service. As the Coalition explained throughout this proceeding, it is far more expensive to provide the integrated package of services and equipment necessary for inmate collect calling than it is to provide regular collect calling. Yet, a majority of the states have established rate ceilings for local inmate collect calls at or below the incumbent LECs' regular collect call rate.

The Commission has two options for addressing the state-imposed rate ceilings. First, the Commission could opt to deregulate inmate calling rates. This is the path that the Commission chose to follow in the case of local coin rates. Second, the Commission could prescribe a $.90 federal rate element to be added to existing state rates in those states where a ceiling is in place. This course has the advantage of leaving intact existing state rates. The $.90 compensation element is based on the differential between the Big Three IXCs' (AT&T, MCI, and Sprint) tariffed rates for inmate and regular collect call service, and thus provides a reasonable surrogate for the cost of providing inmate service.

Section 276 also required the Commission to establish nonstructural safeguards to end the BOCs' historical discrimination against independent ICS providers in favor of their own ICS operations. In its comments in the earlier phases of this proceeding, the Coalition urged the Commission to address its safeguards for inmate calling service to three specific areas of concern: (1) segregation of bad debt associated with the BOCs' ICS; (2) nondiscriminatory access to all fraud control information supporting the BOCs' ICS; and (3) tariffing of all network functions supporting BOCs' ICS. The ICS Coalition also stressed the over-arching need for the Commission to deregulate the entire inmate calling service, wherever located, and not merely the premises equipment.

The *Payphone Orders* failed to address these specific areas of concern, and ruled that the *Computer III* safeguards apply to "inmate payphones," omitting to specify their application to inmate calling services. This omission allowed the BOCs to interpret the *Payphone Orders* as requiring the deregulation of premises equipment only—not services—thereby preventing *Computer III* safeguards from effectively addressing any of the key issues of subsidy and discrimination in the inmate context. Unless this error is corrected, the BOCs can continue to subsidize their ICS. So long as the BOCs can continue to define their inmate collect calling service as part of regulated operations, they can absorb losses generated by bad debt from their ICS because they can commingle that bad debt with bad debt from other services. Similarly, fraud control information can still be provided solely to the BOCs' ICS operations because the entity receiving the information can be defined as part of regulated operations. Additionally, the tariffing of network services to prevent subsidy functions can be circumvented, because the entity that uses those network functions can be defined as part of regulated operations. Finally, the Commission must also address the BOCs' discriminatory handling of so-called "Code 50

Reject Calls"—calls to numbers subscribed to CLECs, for which the BOCs bill on behalf of their own inmate operations but not on behalf of independent providers.

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The Inmate Calling Service Providers Coalition (the "Coalition") submits the following comments in response to the Commission's *Public Notice*, DA 99-841, released May 6, 1999, requesting comment on the remand issues in this proceeding ("*Remand Notice*").

The *Remand Notice* is the result of a court challenge brought by the Coalition of the Commission's 1996 *Payphone Orders*[1] as they related to inmate calling services ("ICS"). As a result of the Commission's failure to adequately address ICS in the orders, the Coalition filed a petition for review of the Commission's rulings with the United States Court of Appeals for the District of Columbia Circuit. After the filing of the Coalition's initial brief, the Commission sought a voluntary remand of the case. In its request for remand, the Commission acknowledged that it had not adequately addressed the issues raised by the Coalition and asked the court to return the proceeding to the Commission so that it could provide further analysis, promising that it would act expeditiously. The court granted the Commission's request for remand on January 30, 1998.

1 *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541 (1996) ("*Payphone Order*"), *recon.*, 11 FCC Rcd 21233 (1996) ("*Payphone Reconsideration Order*").

Only now, well over a year later, is the Commission turning its attention to the remand proceeding. In the three years since the *Payphone Orders*, independent ICS providers have struggled to compete without the fair compensation to which they are entitled and without the "level playing field" promised by the Telecommunications Act. Until there is fair compensation and adequate safeguards for fair competition, the improvements in inmate telephone service sought by the Act cannot be realized.

A NOTE REGARDING THE DATA TO BE FILED IN CONJUNCTION WITH THESE COMMENTS

In the *Remand Notice,* the Commission requested updated information concerning state-imposed rate ceilings on local inmate collect calls and on the costs of providing such calls. The Coalition and its members are in the process of finalizing a set of responsive data. The data will be provided to the Commission in the next several days as a supplement to the instant filing.

BACKGROUND

I. SECTION 276

A. Section 276 Directed the Commission to Set Fair Terms of Competition in the Payphone Industry and to Ensure Fair Compensation for All Completed Calls from Payphones

In enacting the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), Congress sought to erect a new, "pro-competitive deregulatory national framework" for the telecommunications industry. S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996) ("*Senate Conf. Rep.*"). Consistent with that goal, the new Section 276, 47 U.S.C. § 276, directed the Commission to prescribe new rules for the payphone industry in order to "promote competition among payphone service providers and promote widespread deployment of payphone services." 47 U.S.C. § 276(b)(1).

Although competition in the provision of payphone service and inmate telephone service was authorized by the Commission in 1984 (*See Registration of Coin Operated Telephones*, 57 RR2d 133 (1984)), for the next 12 years the Bell Operating Companies ("BOCs") and other local exchange carriers ("LECs") were allowed to continue to operate their payphone services as part of their regulated local exchange service (*Tonka Tools, Inc.*, 58 RR2d 903 (1985)). As a result, the BOCs and LECs were able to continue to subsidize their payphone and inmate service operations with revenue from other regulated operations, and to discriminate in favor of their own payphone and inmate service operations *vis-a-vis* independent payphone providers in the provision of the necessary underlying basic services. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 FCC Rcd 6716, 6718 (1996) ("*Payphone Notice*"); *see also* Comments of the RBOC Payphone Coalition, CC Docket 96-128, filed July 1, 1996, at 16, 21-22 (acknowledging payphone subsidies). While independent payphone providers purchased such services on a "tariffed, arms-length basis," the LECs "offer[ed] their public pay phone service as a bundled offering of network services and premises equipment that [were] totally integrated into local exchange operations." *Senate Conf. Rep.* at 57. The result of the subsidization and discrimination by the BOCs and LECs was that independent payphone and inmate service providers were placed "at a significant competitive disadvantage vis-a-vis the [BOCs' and] LECs' payphone operations." *Illinois Pub. Tel. Ass'n v. FCC*, 117 F.3d 555, 559 (D.C. Cir. 1997).

In order to address that competitive imbalance, Section 276 provided that "any [BOC] that provides payphone service (1) shall not subsidize its payphone service directly or indirectly from its telephone exchange operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service." 47 U.S.C. § 276(a). To accomplish this goal, Congress ordered the Commission to prescribe regulations to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments . . . and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues." 47 U.S.C. § 276(b)(1)(C). Congress further ordered the FCC to "prescribe a set of nonstructural safeguards for [BOC] payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding." *Id.*[2]

Section 276 also directed the Commission to prescribe a compensation plan for payphone providers. Specifically, Section 276 required the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed interstate and int*ra*state call." 47 U.S.C. § 276(b)(1)(A) (emphasis added).

B. Section 276 Defined Payphone Service to Include Inmate Calling Service

Prior to enactment of Section 276, the LECs' ICS operations were integrated with the LECs' other regulated services in much the same fashion as the LECs' payphone services. *Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, 11 FCC

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[2] In the *Computer III* proceeding, *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 F.C.C.2d 958 (1986) (subsequent history omitted), the Commission adopted various nonstructural safeguards for the provision of nonregulated enhanced services by the BOCs to prevent the BOCs' regulated operations from discriminating in favor of their enhanced services operations. *Payphone Notice* at 6747. The safeguards that the Commission adopted in *Computer III* include: (1) nondiscriminatory access to network features and functionalities; (2) restrictions on the use of customer proprietary network information; (3) network information disclosure rules; (4) nondiscrimination in the provision, installation, and maintenance of services as well as nondiscrimination reporting requirements; and (5) cost accounting safeguards. *Id.* Any basic network services used in the provision of enhanced services were to be made available to independent enhanced service providers on a tariffed basis with those same tariffed charges imputed to the BOCs' nonregulated enhanced service operations.

Rcd 7362, 7365-66 (1996) ("*Inmate Declaratory Ruling*"). Section 276 made explicit that "inmate telephone services"[3] are included within the scope of its mandate. Section 276(d) defined "payphone service" as "the provision of public or semi-public pay telephones, *the provision of inmate telephone service* in confinement institutions, and any ancillary services." 47 U.S.C. § 276(d) (emphasis added). The FCC was thus obligated to apply each of Section 276's directives to inmate calling service as well as to payphone service generally.

II. THE NATURE OF INMATE CALLING SERVICE

Inmate calling service is, as the term implies, calling service provided to inmates in confinement facilities. Inmate calling service is provided by a diverse group of providers including independent (i.e., non-telephone company) service providers like the members of the Coalition, the BOCs, other LECs, and IXCs. Typically, ICS providers compete for the right to serve as the contracted service provider within a particular confinement facility. Generally, under the service contract, the ICS provider installs, operates, and maintains all inmate telephones and related equipment and provides the related services. In exchange for the right to be the exclusive service provider, the ICS provider pays a commission to the confinement facility based upon inmate telephone use. *Inmate Declaratory Ruling* at 7364.

Though included in the statutory definition of "payphone service," inmate calling service differs significantly from the payphone service used by the general public. At a public payphone, a caller can place a call using coins or a calling card, can use the presubscribed carrier or dial an access code to reach a different carrier, call directory assistance or 911, reach an

[3] The term "inmate calling services" is used throughout these comments synonymously with "inmate telephone services."

operator, talk for unlimited amounts of time and dial any number, including 800 numbers. The unique nature of the inmate calling environment, however, dictates a radically different service.

A. ICS Providers Permit Only Collect Calls

Almost without exception, coin calling is not allowed by confinement facilities. In general, the only calls allowed to be placed by inmates are collect calls.[4] Thus, collect calls play much the same role in inmate facilities as coin calls do in the public payphone sector. Collect calling is the dominant method of service and the primary source (and usually the only source) of revenue for inmate service providers.

Unlike public payphone providers who typically route their collect and other "operator-assisted" calls to a separate OSP, independent ICS providers generally process their collect calls themselves on an automated basis; because of security concerns, access to live operators is denied. Using digitized voice processing, the ICS provider obtains acceptance of the collect call from the call recipient, releases the call into the public network, monitors the call, and generates a call record that will later form the basis for billing the recipient of the call. Typically these call processing functions are entirely automated.

B. ICS Providers Adopt a Variety of Call Controls to Address the Security Needs of Confinement Facilities

Security and public safety concerns associated with inmate telephone use require that confinement facilities have the ability to impose call controls on inmates. The most basic and critical of these call controls is the restriction to collect calls only. Confinement facilities typically require that ICS providers block all direct-dialed calls, access code calls, 800/900 calls, and calls to numbers such as 411 and repair service. Blocking calls to these numbers reduces inmate abuses of their calling privileges by limiting access to the public telephone network.

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4 Some facilities have begun to operate "debit" systems as a coinless alternative to collect calling. However, in most facilities collect calling remains the norm.

The ability to restrict inmate calling by called number is another specialized call control of the inmate calling environment. To prevent harassment, fraudulent calling, or criminal activity, inmate calling systems may (1) block an inmate's ability to make calls to certain designated numbers, such as to judges or witnesses, or (2) restrict inmate calling only to certain pre-designated numbers, such as those of family members or an attorney. Additionally, controls may be placed on time of day, or the number of calls permitted.

Call control involves checking various data bases before a call is placed, e.g., to authenticate the inmate's personal identification number, to determine if the dialed number has been pre-approved or prohibited for that inmate, and to check for frequent calls by one or more inmates to the same number -- indicating potential criminal activity or a "hot house" established to defeat the controls and allow open access to the public network.

A critically important group of controls is used to combat bad debt, which, as discussed in the following section, is a major cost facing ICS providers. The ICS provider typically queries its billing database to check for indicators of fraud or payment risks, such as an unusually high balance owed by the called party. And, after all the internal data base checks are completed, a "validation" query is sent to the Line Information Data Base ("LIDB")[5] to determine if the called number has screening to block collect calls from being billed to it (e.g., payphones, hospitals, or other restricted numbers). Only after the call has cleared the call controls described in this section is the call processed and completed as a collect call.

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[5] LIDB is a series of interconnected databases maintained by the LECs to enable them to share validation and screening data with each other and other providers. *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, *Report and Order and Request for Supplemental Comment*, 7 FCC Rcd 3528, 3533 (1992). LIDB data must be provided on a nondiscriminatory basis. *Id.* Requesting carriers are charged a fee for each "dip" into the LIDB database. *Id.* ICS providers are charged the fee regardless of whether the call is eventually completed.

After completion to the called party, the call is monitored to control its duration and to detect and control three-way calling. Voice overlays may be used during the call to identify it as a call from a confinement facility, so that called parties are not unwittingly manipulated by an inmate. In addition, confinement facilities also typically require listening and/or recording capability.

Finally, inmate calling systems generally must be able to provide customized call detail reports. These reports typically include the date and time of the call, the identity of the inmate caller, call duration, and the called number. These call detail reports assist in the detection and prevention of criminal activity and fraudulent calling.

C. ICS Providers Must Address the High Levels of Bad Debt Associated with Inmate Calling

In addition to meeting the security needs of confinement facilities, ICS providers must also address the high levels of "bad debt" associated with inmate calling. The levels of bad debt from inmate calling run several times higher than in the general public payphone industry. As explained in more detail below, there are two major sources of inmate bad debt. First, there are calls for which the IC provider cannot collect due to fraud on the part of inmates and their called parties. This type of bad debt is referred to as ""uncollectibles." Second, there are calls to legitimate numbers that the ICS provider is unable to bill for because the number is served by a CLEC instead of the LEC with whom the ICS provider has a billing arrangement. This type of bad debt is referred to as "unbillables."

The Coalition has previously filed with the Commission data supplied by two major billing clearinghouses serving the ICS industry indicating that ICS provider bad debt can be 30% or higher. *See* Comments of Inmate Calling Service Providers Coalition, CC Docket 96-128, filed July 1, 1996. Current bad debt percentages for the Coalition's members will be included with the supplemental data that the Coalition intends to file within the next few days.

D. ICS Providers Offer an Integrated Package of Call Control and Call Processing Equipment and Services to Meet the Unique Requirements of the Inmate Environment

The call control and call processing functions described above are usually carried out in equipment located on the premises of the confinement facility. Even if the equipment is physically located in a central office or comparable facility, as is the case with some of the BOCs, it is either dedicated to, or specially programmed for, the particular confinement institution.

In either event, there is necessarily an integral relationship between the call control functions, the call processing functions, the billing, and collection of ICS calls. For example, the call processing system is usually configured so that calls never default to a live operator in order to prevent unscrupulous inmates from duping the operator into providing open access to the public network. Further, in order to minimize bad debt, information received in the course of billing and collecting for inmate calls should be available so that the call control systems can use such information as appropriate to implement additional restrictions on inmate calling. Call control and call processing are typically integrated into a single system under the ICS provider's control. Even if the call processing is provided separately—for example, through network-based automated collect calling features—it must be subject to special restrictions and must be coordinated with the call control functions.

E. The High Costs of Doing Business in the Inmate Environment

Because of the special characteristics of the inmate calling environment outlined above, the per-call costs of inmate calling services are substantially higher than the costs of conventional operator services utilized at payphones. First, the specialized package of sophisticated call processing and call control systems and extensive fraud control programs developed by ICS providers require significant capital investment. Second, as mentioned above, even with sophisticated call control equipment, the level of bad debt associated with calls from confinement facilities is several times higher than from public payphones. Third, labor expenses are high because ICS providers must maintain a customer service staff equipped to address the needs of inmates, the inmates' called parties, and the confinement facilities.

DISCUSSION

The ICS issues pending before the Commission on remand fall into two general categories. First, there is the need to ensure that ICS providers are fairly compensated for inmate calls, as required by Section 276. Second, there is the need to end the BOCs' historical practices of (1) discriminating against independent inmate calling service providers and in favor of their own inmate operations and (2) subsidizing their inmate operations with revenues from other services. Each is discussed separately below.

I. THE COMMISSION MUST ENSURE THAT ICS PROVIDERS ARE FAIRLY COMPENSATED FOR LOCAL INMATE CALLS

A. Section 276 Requires the Commission to Ensure Fair Compensation for ICS Calls

Section 276(a)(1) directs the Commission to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(a)(1). As discussed above, Section 276(d) explicitly defines "payphone service" to include inmate calling services. 47 U.S.C. § 276(d). Thus, the Commission is obligated to ensure that ICS providers are fairly compensated for each and every call made from their inmate telephones.

In the *Payphone Order*, the Commission determined that "fair compensation" generally means the level of compensation set by the market. *Payphone Order* at 20567 ("[O]nce competitive market conditions exist, the most appropriate way to ensure that PSPs receive fair compensation for each call is to let the market set the price for individual calls originated on payphones."). Thus, where the market is effective, the Commission determined that it fulfilled its obligation to ensure fair compensation by allowing market forces to operate. *Id.* The Commission found, however, that "where the market does not or cannot function properly . . . the Commission needs to take affirmative steps to ensure fair compensation." *Id.* Specifically, the Commission has said it must affirmatively address the issue of compensation where a "government-mandated rate . . . may not be high enough to be 'fairly' compensatory." *Payphone Notice* at 6726 n.54.

B. State-Imposed Ceilings on the Rates ICS Providers Can Charge for Local Inmate Calls Prevent ICS Providers From Receiving Fair Compensation for Those Calls

Local inmate calls are an instance where a "government-mandated rate" has kept the market from functioning properly to ensure fair compensation. As shown on the chart filed by the Coalition as part of its recent *ex parte*, the majority of state public utility commissions have set ceilings on the rates that ICS providers can charge for local inmate collect calls.[6] *See* Letter from Jacob S. Farber to Kris Monteith, Chief, Competitive Pricing Division, dated March 12, 1999. In most states, those rate ceilings are based on the incumbent LECs' standard collect calling rates. *See id*. In other words, ICS providers are forced to charge the same rates for inmate collect calls as the LEC charges for a regular collect call from any business or residential phone. The ICS rates mandated by the states include no element whatsoever to recover the unique extra costs of providing inmate service over and above the costs of providing regular collect service. In several

[6] Current information regarding state-imposed rate ceilings on local inmate collect calls will be included in the supplemental data to be filed by the Coalition.

states, the situation is even worse: the state-imposed rate ceiling for inmate collect calls is actually *lower* than the incumbent LEC's regular collect call rate.

In its March 12, 1999 *ex parte*, the Coalition included separate charts for each of the nine states with the lowest recovery for a typical local ICS call, showing the total cost of providing the call for an independent ICS provider. The charts reflect that in each of the nine states, an independent ICS provider would lose money on the average local call. In those states, providers not only fail to earn a reasonable profit, but they are also unable to even recover their costs The Coalition is in the process of compiling even more comprehensive data, updating and refining the cost analysis and extending its coverage to include the 20 states with the lowest local inmate collect call rates. That data will be submitted as part of the Coalition's supplemental submission.

C. To Ensure Fair Compensation the Commission Must Either Deregulate Inmate Calling Rates, or Establish a $.90 Federal Rate Element to Provide Fair Compensation for ICS Providers

Because state-imposed rate ceilings on local inmate collect calls do not provide ICS providers with the fair compensation mandated by Section 276, the Commission must act. In the Coalition's view, the Commission has two options. As one alternative, the Commission could simply preemptively deregulate inmate calling rates, allowing the market (subject to limits imposed by correctional facilities), to set rates at levels which fairly compensate ICS providers. As a second alternative, the Commission could prescribe a $.90 federal rate element that may be added to existing state-approved rates to ensure that ICS providers are fairly compensated for the unique costs associated with inmate service while leaving state rate in place.

1. Deregulating Local Inmate Calling Rates

The deregulation option would be consistent with the Commission's treatment of a comparable problem in the *Payphone Orders*. When faced with state rate ceilings for local coin calling rates that did not permit fair compensation for payphone service providers ("PSPs"), the

Commission opted to carry out its Section 276 mandate by preemptively deregulating the rates in question. The Commission concluded that "the most appropriate way to ensure fair compensation is to let the market set the price for individual payphone calls." *Payphone Order*, 11 FCC Rcd at 20567. Pursuant to Section 276(c), the Commission preempted state rate ceilings on local coin rates as inconsistent with the federal policy of relying on the market to set fair compensation.

The Commission could follow a similar course here. As noted above, collect calling is the predominant method of calling—and usually the only calling method allowed—in confinement facilities. Thus, collect calling is even more critical to the economics of inmate telephone service than local coin calling is to public payphone service. Like the local coin calling rate ceilings preempted by the Commission, local collect calling rates are "government-mandated rates" that prevent inmate service providers from recovering fair compensation.

2. Establishing a $.90 Cost Element

Another available option is to prescribe a federal rate element that may be added to the existing state-approved rates in those states where there is a rate ceiling, in order to ensure that ICS providers can recover the unique ICS costs not addressed by state rate ceilings. This solution has the advantage of leaving the state rate ceilings untouched, while at the same time providing ICS providers with the fair compensation to which they are entitled under Section 276.

In its previous comments in this proceeding, the Coalition has advocated the adoption of a $.90 federal rate element. The $.90 rate is based on interstate tariffs filed by each of the "Big Three" IXCs (AT&T, MCI, and Sprint) for their inmate calling services. The inmate calling services offered by the Big Three are functionally similar to those offered by the typical ICS provider. Reply Comments of Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996. In the case of each of the Big Three, the interstate tariff for an inmate call provides for a $.90 additional surcharge for inmate collect calls, above and beyond the regular collect call surcharges, in order to allow the carrier to recover the extra costs associated with inmate calling.[7] *Id.* Thus, the $.90 differential in each of the Big Three tariffs provides an accurate proxy for the additional costs borne by an ICS provider for completing an inmate call, above and beyond the costs associated with standard collect calls. Adopting a compensation element based on the Big Three's tariffs is consistent with the Commission's tentative conclusion in the *Payphone Notice* that "fair compensation" should be defined through a cost-based surrogate.

One advantage of prescribing a federal rate element to be added to existing state-approved rates is that it would preserve the ability of state commissions to determine the appropriate rate for inmate service calls, while at the same time ensuring fair compensation for ICS providers, as mandated by Section 276. To the extent that any state commission is concerned that the $.90 federal rate element results in an excessive total charge for an inmate service call, the state commission would be free to conduct rate proceedings in accordance with the usual rate-setting standards to examine whether the state-approved rate should be modified.

The objections to this approach cited in the prior *Payphone Orders*, are not valid. One of those objections was that prescription of a federal rate element "could possibly lead to a double recovery of costs already included in higher-than-average operator service rates and special surcharges on end-user phone bills for [inmate calls]." *Payphone Order* at 20579. This objection was apparently based on a misunderstanding of the Coalition's proposal. The $.90 rate element would not be applicable in any jurisdiction where inmate service providers are free to set

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[7] In each case, the interstate tariff specifies a collect call surcharge at or near $3.00 for inmate collect calls. The collect call surcharge for regular collect calls at the time the inmate rates were filed was approximately $2.10. Reply Comments of Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996.

their own rates. For example, it would not affect interstate rates, which have been functionally deregulated by this Commission. In jurisdictions where rate ceilings currently apply, the federal rate element would increase the overall authorized change. However, the record before the Commission makes clear that in all but a handful of those states, the rate ceiling is currently set at, or below, the incumbent LEC's regular collect calling rate. There is no allowance for the special costs associated with inmate calling.

The second objection to a federal rate element for inmate service calls was that "[b]ecause virtually all calls originated by inmate payphones are 0+ calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount." *Payphone Reconsideration Order* at 21269. This objection is misconceived in several respects. As the Commission explained in the *Payphone Notice*, its mandate under Section 276(b)(1)(A) to ensure that payphone providers are "fairly compensated" applies "regardless of whether the PSP currently receives compensation for the particular call originated by its payphone." *Payphone Notice* at 6725.[8]

As noted above, inmate service providers' need for fair compensation for inmate collect calls is analogous to public payphones providers' need for fair compensation for local coin calls. Prior to the *Payphone Orders*, public payphone service providers were able to collect *some* revenue for local coin calls, but the Commission recognized that "[c]urrent local rates may not always 'fairly' compensate the PSP for the use of its payphone. For example, while a local call provides some revenue to the PSP, local coin rates in some jurisdictions may not cover the

[8] In addition, independent ICS providers generally do not "receive their compensation pursuant to contract." Unlike public payphone providers, independent ICS providers do not contract with a third-party OSP to process and carry out their collect calls. Instead, independent ICS providers process their own collect calls. Thus, the only compensation received for inmate collect calls is the revenue collected from the billed party; there is no additional source of compensation.

marginal cost of the service." *Id.* at 6728 n.64. Recognizing that those ceilings prevented fair compensation for local coin calls, the Commission took action to ensure fair compensation. *Payphone Order* at 20568. Similarly, the rate ceilings that prevent fair compensation for inmate service calls must he corrected with appropriate Commission action.

The third objection previously raised by the Commission is that fair compensation for ICS providers is better left to the states. The fair compensation requirement, however, is not an obligation that the Commission may delegate to the states. The Commission ruled in the *Payphone Reconsideration Order* that:

> Section 276's mandate that PSPs be fairly compensated for all payphone calls is an obligation that is borne both by us and the states. If an inmate provider believes, after making its arguments to a particular state in light of Section 276 and the instant proceeding, that it is not receiving fair compensation for intrastate toll calls originated by its inmate payphones, it may petition the Commission to review the specific state regulation of which it complains.

Payphone Reconsideration Order at 21269. Section 276, however, makes no mention of, much less provides any role for, the states in ensuring fair compensation. As the Commission recognized in the case of local coin calling rates for public payphones, the fair compensation obligation is placed squarely and solely on the Commission. The Commission cannot abdicate its responsibility. *See United States v. City of Detroit*, 720 F.2d 443, 451 (6th Cir. 1983) ("an agency charged with the implementation of a statutory framework ordinarily possesses no authority to deviate from or abdicate its statutory responsibilities"); *cf. Perot v. Federal Election Commission*, 97 F.3d 553, 559 (D.C. Cir. 1996) ("when Congress has specifically rested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor").

In any event, independent ICS providers have already sought relief from the states without success. For example, the North Carolina Payphone Association filed a petition with the North Carolina Public Utility Commission requesting that the North Carolina Commission prescribe an inmate compensation element to provide recovery of the unique costs of providing inmate service. Notwithstanding the fact that North Carolina's inmate rates are among the lowest in the country, the North Carolina commission rejected the petition, holding that ICS providers are adequately compensated.

II. THE COMMISSION MUST PUT AN END TO THE BOCS' SUBSIDIZATION AND DISCRIMINATION IN FAVOR OF THEIR OWN ICS OPERATIONS

In addition to ensuring fair compensation for ICS providers, Section 276 also requires the Commission to establish nonstructural safeguards to end the BOCs' subsidizing of their own inmate service operations and discrimination against independent ICS providers. 47 U.S.C. § 276(a). Section 276(b)(1)(C) provides that the Commission shall:

> prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding.

47 U.S.C. § 276(b)(1)(c). The referenced *Computer III* safeguards were designed to protect against improper subsidization and discrimination by the BOCs in their provision of certain competitive services. The safeguards work by defining the competitive services, according to specific criteria,[9] classifying those services as "nonregulated," and requiring the BOCs to strictly separate the costs, revenues, and uncollectibles that are attributable to those nonregulated

9 In the original *Computer III* rules, the competitive services subject to the safeguards were defined as "enhanced services," under criteria enunciated in a specific rule. 47 C.F.R. § 64.702(a).

operations. *Computer III* safeguards also ensure that the BOCs provide regulated functions supporting the competitive services on the same terms and conditions to their nonregulated service operations and to independent competitors. *See generally Computer III*. These mechanisms can only be effective in preventing subsidies and discrimination if the competitive services that would otherwise receive subsidies or discrimination are classified properly as part of the BOCs' nonregulated operations.

A. In the *Payphone Orders*, the Commission Failed to Define the Services Subject to *Computer III* Safeguards Correctly, Thereby Enabling the BOCs to Continue Their Subsidization and Discrimination in Favor of Their Own Inmate Calling Services

The BOCs and other ILECs have not discontinued subsidies and discrimination in favor or their own inmate service operations. *Cf*. Public Notice at 2. The BOCs have interpreted the *Payphone Orders* as requiring the deregulation of premises equipment *only*—not services—thereby preventing the *Computer III* safeguards mandated by Section 276 from effectively addressing any of the three key issues of subsidy and discrimination identified by the Coalition. Unless the Commission clarifies that the scope of the deregulated ICS includes services as well as equipment, no safeguards adopted by the Commission will have any meaning because the critical revenues, costs, and relationships with the BOCs' regulated operations will remain outside of the safeguards' protections.

By implementing *Computer III* safeguards solely as to their premises equipment, not service, the BOCs' have left their inmate calling service—i.e., the provision of collect calling for inmates—almost wholly outside the protections of the *Computer III* safeguards. By defining their nonregulated operation so narrowly that it does not assume the financial responsibility and risk associated with the provision of the collect calling service for inmates, the BOC's have allowed their inmate calling service to continue to benefit from all the subsidies and discrimination prohibited by Section 276.

1. Uncollectibles

As discussed above, one of the critical differences between ICS and ordinary operator services is the extremely high proportion of bad debt associated with ICS. Even with sophisticated controls in place, bad debt from ICS far exceeds bad debt from other operator services as a percentage of billed revenue. The BOCs do not segregate bad debt associated with their ICS operations from bad debt associated with regulated services. As a result, BOC inmate calling service operations do not have to account for their own bad debt. A particularly egregious example of this is attached hereto as Exhibit 1 (in a bid proposal to provide inmate service, Bell Atlantic asserts that it has no uncollectibles).

In essence, the receivables associated with BOC ICS are commingled with other LEC receivables, and so are the associated uncollectibles. Because ICS bad debt is much higher than bad debt associated with other LEC receivables, most of the costs of ICS bad debt are borne by the BOCs' regulated operations, and recovered from regulated ratepayers, rather than charged back directly to the ICS operation. Further, because the regulated operations assume the burden of the receivable, the regulated operations also assume the burden of all the underlying costs[10] associated with generating the receivable. In short, the BOCs are able to effectively use revenues from other services to subsidize the costs and lost revenue associated with their bad debt from ICS. This is a significant competitive advantage for the BOC inmate operations vis-à-vis their independent competitors. Bad debt is a large component of the cost of providing ICS.

[10] These costs include all costs associated with many call control functions and the processing and carrying of an uncollectible call, including validation, automated collect call processing, transmission, and billing expenses. Since the revenue for the call is not collected, all the associated costs must be recovered from other revenues.

By freeing themselves of that cost, the BOC inmate operations are able to considerably improve their margins. This, in turn, permits the BOCs to offer larger commission payments to facilities than independent providers are able to, allowing the BOCs to expand their share of the market at the expense of the Coalition's members. *See* Exhibit 2 (excerpts from various BOC bid proposals committing to commission payments of 40% and higher).

By contrast, when the BOCs bill on behalf of independent ICS providers, and do not collect the amount billed, that specific uncollectible is charged back to the independent ICS provider, which then must take a revenue reduction. In addition, the independent ICS provider must absorb the entire cost of the call and is liable to pay the carrier for the costs of the call, even though the ICS provider is unable to collect from the called party.

This treatment of inmate collect calling flies directly in the face of Section 276. Congress clearly intended that the BOCs' ICS operations be cut off from all subsidies from regulated revenues, so that the ICS operations would no longer be insulated from market forces and would be forced to compete on a level playing field with independent ICS providers.

2. Fraud Control Information

Similarly, the BOCs are free to continue discriminating in favor of their ICS in the provision of fraud control information. For *Computer III* safeguards to effectively prevent discrimination in the provision of fraud control information to support ICS, it is necessary to define the BOC entity that receives and benefits from that information as part of the BOC's nonregulated operation. Under *Computer III*, only services that are provided to the BOCs' nonregulated entity must be offered to other providers on the same terms. If the BOC is allowed to define its ICS—the entity that receives the information and thus avoids incurring bad debt from allowing fraudulent calls—as part of the "regulated" operation, then the discrimination will continue unchecked, because the information is *not* provided to and does *not* benefit the BOC's "nonregulated" operation. As a result, the *Computer III* safeguards accomplish nothing. Not only must the independent providers bear the cost of their own bad debt while the BOCs are able to pass their own bad debt costs on to regulated ratepayers, but independent providers must also pay to obtain the information necessary to control bad debt—if available at all—while the BOCs can use that information without incurring any comparable charge.

3. Provision of Services Under Tariff

Finally, the BOCs are left free to circumvent the requirements to provide under tariff—to themselves and other ICS providers—any network service supporting their inmate calling service operation. In order for the *Computer III* safeguards to be effective in preventing subsidies and discrimination, the beneficiary of network support must be defined as part of the nonregulated operation so that it is subject to a charge for each network function provided and so that independent ICS providers can obtain the same network functions at the same rates "paid" by the BOC's ICS operation. If the BOC's nonregulated operation is not charged a tariffed rate for the validation of ICS calls, for the use of any regulated call processing functions, or even for pure transmission of the call through the BOC's network, while independent providers *are* charged for those same services, then discrimination has not been prevented. Furthermore, subsidies of ICS will continue because the BOCs' cost of providing these functions will be commingled with all the BOCs' regulated costs.

B. The Flaws in the Commission's Orders Are Further Confirmed by Subsequent Commission Staff Rulings

In the *Payphone Order*, the Commission had required each of the BOCs to file a comparably efficient interconnection ("CEI") plan describing how it will comply with the *Computer III* nondiscrimination safeguards. On April 15, 1997, the Common Carrier Bureau released a series of seven orders ("*CEI Orders*") addressing the CEI plans filed by each of the

BOCs. *See, e.g.*, *Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Service*, *Order*, 12 FCC Rcd 4275 (CCB 1996) ("*Bell Atlantic CEI Order*").

To varying degrees, the BOCs in their CEI plans and subsequent filings demonstrated that they did not intend to treat their inmate calling service as nonregulated operations. *See, e.g.*, *id.* at 4308-12. For example, even though the only role played by Bell Atlantic's regulated network operations in its provision of ICS is the physical transmission of the call, Bell Atlantic nevertheless stated that it treats its inmate collect calling service as part of its regulated operator services, and thus exempt from the *Computer III* safeguards. *See* Ex Parte Letter from Marie Breslin, Director - FCC Relations, to William Caton, Acting Secretary, Federal Communications Commission (March 24, 1997). According to Bell Atlantic, the specialized call processing functions which are the *sine qua non* of ICS "ha[ve] been viewed as adjunct to Bell Atlantic's [regulated] operator services." *Id.*

However, if the BOC's regulated side incurs the expense of transmission and call processing and assumes the responsibility and risk of bad debt associated with billing and collecting for those calls, then the BOC is essentially providing the ICS as a regulated service and is still subsidizing that service in contravention of Section 276. *Id.* at 8-10. The BOCs' CEI plans also failed to identify the basic services and fraud and account information that support their ICS operation and to commit that such services and information will be provided to independent providers on a nondiscriminatory basis. *Id.* at 6-7.

While the *CEI Orders* require the BOCs' ICS *equipment* to be provided on a nonregulated basis, the orders go on to say that the BOCs will not be required to "provide collect calling as a nonregulated *service* when used with inmate phones." *See, e.g.*, *id.* (emphasis added).[11] *See also Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, Memorandum Opinion and Order,* DA 97-1244 (Accounting & Audits Division, released June 13, 1997), ¶ 20 (approving cost allocation manual revisions that allow 17 LECs to charge uncollectible revenue from ICS calls to regulated operations and holding that under the *Payphone Orders*, the revenue and costs associated with inmate collect calling should not be treated as nonregulated for accounting purposes).

C. To End BOC Subsidization and Discrimination, the Commission Must Correctly Define ICS to Include the Entire Service—Not Merely the Underlying Equipment—and Must Put into Place the Specific Safeguards Sought by the Coalition

In order to put an end to the BOCs' continued subsidization and discrimination, the Commission must make clear that the inmate calling services deregulated by Section 276 include not only the underlying equipment, but also the service itself, along with the associated revenues and costs.[12] Only by so doing can the Commission give meaning to the safeguards required by Section 276.

The Commission, however, must do more than merely correct the scope of the inmate calling services deregulated by Section 276. The Commission must also put into place a number of specific protections in order to prevent continued BOC abuses.

1. Uncollectibles

The Commission must make clear that the BOCs must afford independent ICS providers the same treatment that the BOCs afford their own ICS operations with respect to uncollectibles. The Commission should require that the BOCs' inmate calling services operations enter into

[11] Each of the other *CEI Orders* contains the identical language.

[12] This application of the *Computer III* safeguards to services is fully in accord with the purpose of the original *Computer III* decision, which was to deregulate—and thereby eliminate subsidies and discrimination in—the BOCs' "enhanced" *services* offerings.

arm's length billing and collection agreements with the BOCs' billing divisions. Further, the BOCs must be required to provide billing and collection services to independent ICSPs' on the same terms and conditions that they offer such agreements to their own inmate calling services divisions.

Another way in which the BOCs currently discriminate against independent ICS providers is in the length of time it takes them to report a call as uncollectible. It is not unusual for it to be as long as 12 to 18 months from the time the independent ICS provider submits a call record until the independent provider learns the call is uncollectible, either as a result of fraud or the called party's inability or unwillingness to pay. During that period, thousands of additional dollars of fraud may have occurred that would have been prevented had the BOC timely reported the call as uncollectible. To ensure the ability of independent ICS providers to compete fairly with the BOCs, the Commission should establish reasonable time limits for the provision of billing results. In particular, the Commission must require that the BOCs report to independent ICS providers when the billed party has denied responsibility for the ICS providers portion of their bill. Currently, this is a source of considerable fraud because inmate families have learned that they can deny knowledge of the calls billed by the ICS provider but not risk the termination of their phone services by paying the BOCs' portion of their bill.

The Commission should also require the BOCs to treat all inmate calling services, including their own, identically with respect to local service cut-offs. The BOCs may not indicate or imply that local service may be cut off for failure to pay charges assessed by the BOCs own ICS, while refusing to cut-off local service for non-payment of other ICS providers' charges.

2. Fraud Control Information

Independent ICS providers have historically been handicapped in their ability to compete with BOC inmate calling services operations because the BOCs have provided critical account and fraud control information to their inmate divisions that they have refused to make available to independent ICS providers on an unbundled basis and on reasonable terms. While some of this information can be obtained if the ICS provider enters into a direct billing agreement with the BOC, the cost of entering into such a billing arrangement is generally prohibitive.[13] Moreover, some BOCs refuse to provide the information even to ICS providers with whom they have billing and collection agreements.[14] As a result, the vast majority of independent ICS providers use third-party billing clearinghouses for calls outside of the service area of the incumbent LEC. The billing agreements between the BOCs and such third-party clearinghouses typically prohibit the use of information supplied to the clearinghouse by any other party.

The critical information that the BOCs currently provide to their own operations but historically have refused to make available to independent ICS providers on reasonable terms includes, among other things:

- Customer account information, including Social Security number and customer code;
- Service establishment date;
- Disconnect Date and reason for disconnect;
- Additional lines;
- Previous telephone numbers, if any;

[13] Billing and collection agreements can require upfront payments by independent ICS providers of $75,000 or more.

[14] Even where the BOC is willing to provide the information, it is unavailable to independent ICS providers for unpublished numbers. Inmates and their families have learned to take advantage of this fact. In some localities, 25% or more of the numbers called by inmates are unpublished.

- Service restrictions;
- Class of service;
- Payment history;
- Calling patterns/returns;
- Credit history; and
- Features (e.g. call forwarding or three-way calling)

Section 276's directive that the BOCs not discriminate in favor of their own operations requires that the Commission order that the account and fraud control information listed above also be made available to independent ICS providers on a nondiscriminatory basis.[15] Without the information listed above, independent ICS providers are handicapped in their ability to compete with the BOCs' inmate divisions, for which the information is readily available. The Commission should order that the BOCs provide this information upon request on an unbundled, nondiscriminatory basis at a reasonable charge.

Moreover, the Commission should order that this information be provided on a real-time basis. The BOCs have access to this information on-line and, presumably, can check any relevant item before completing an inmate call. This allows them to identify potential problems and minimize the bad debt that is incurred. If independent ICS providers are to be placed on equal footing with the BOCs—as Section 276 requires—they must be able to do the same. Thus, the Commission must order that the BOCs make public, or at least provide independent ICS providers with access to, their internal customer databases, for the limited purpose of validating account information to the extent necessary for billing and collection.

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[15] The use of the account information by independent providers may raise issues under the Commission's CPNI rules. For there to be competitive equality and arms' length dealings between the BOCs and their ICS operations, these same issues should be raised when the information is provided to the BOCs' own inmate operations. Where the CPNI rules preclude independent providers from accessing the information, the BOCs' inmate operations should be subject to the same restrictions. The fact that the BOCs' ICS operations are given access to this information without apparent regard for the CPNI rules illustrates the inherent discrimination in failing to ensure that "services" as well as equipment are subject to nonstructural separation.

Not only must the BOCs make this information available to the independent ICS providers, they must provide it to their own inmate calling services on the identical terms and conditions as an arm's length transactions. The Commission must ensure that to the extent that independent ICS providers are charged for information, their inmate divisions are similarly charged.

The validation of called number billing status through LIDB is another area where the Commission must act in order to ensure equal, nondiscriminatory treatment for independent ICS providers, as required by Section 276. The tariffs of six of the seven regional Bell operating companies require that LIDB validation be performed on an on-line, real-time basis. As a result, ICS providers must validate every call, even where the call is to a known, recently called number. The cost for each LIDB check is $.06 or more. Since every attempted call must be validated, including calls to busy numbers, unanswered calls, and refused calls, ICS providers can spend $.20-.30 or more on validation for every revenue-generating call. By contrast, there is no mechanism in place that ensures that the BOCs' inmate divisions must bear their costs for LIDB validation. Moreover, it is not clear that the BOCs charge themselves the same rates charged to ICS providers by LIDB clearinghouses.

The Commission must require the BOCs' inmate divisions to access LIDB under the same terms and conditions as independent ICS providers. This will ensure both that they properly account for their costs and that they pay the same rate as ICS providers.

3. Provision of Services Under Tariff

With respect to any basic network functions supporting the BOCs' inmate calling services, the Commission should make clear that such functions must be available to independent ICS providers on the same terms and conditions as they are to the BOCs' inmate divisions. If the BOCs perform transmission, switching, or inmate call processing functions in their networks, the

BOCs' nonregulated ICS operations must purchase the functions on a tariffed, arm's-length basis, and the same functions must be provided to independent ICS providers on the same terms and conditions.

4. Unbillables (Code 50 Rejects)

Finally, the Commission must also address the problem of competitive local exchange carrier ("CLEC") number validation. Currently, LIDB provides no indication that a called party has changed telephone companies from an incumbent LEC ("ILEC") to a CLEC. If the called number validated properly as a billable number before the change, it continues to do so. As a result, the independent ICS provider has no way of knowing that it should not continue to complete calls to the number under the assumption that the ILEC will bill the call. Assuming that the number is served by the ILEC, the independent provider then sends its call detail record to the ILEC for billing. As long as several months later, the ILEC reports the call as unbillable.[16]

Even once the LEC reports the call as unbillable, the only explanation given is that the call is a so-called "Code 50 Reject," i.e. a number that is unbillable because it is served by a different LEC. The independent provider receives no information as to which CLEC serves the number. The independent provider thus has no way to bill the call, and must write it off as bad debt. Worse, since independent providers pay the LEC for validation, billing and collection, and local measured service or access charges, the independent provider continues to incur considerable costs for each call made to the number, even though none of them are billable.[17]

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[16] Many inmates are aware of this situation, and it is not uncommon for them to instruct their families to subscribe to service from CLECs knowing that they will receive several months of free calls.

[17] In order words, independent providers are forced to pay their BOC competitors for a LIDB product which does not work.

By contrast, the BOCs' Code 50 rejects are treated very differently. Since the BOC knows that the called party has changed to a CLEC, and knows the identity of the CLEC, BOC inmate divisions have a tremendous and unwarranted advantage. The BOC is able to forward the call detail for billing through the exchange carrier settlement process. As a result, BOC Code 50 calls are processed with little or no unbillables. This competitive imbalance will only worsen as competition develops and more customers elect to switch to CLECs.

The BOCs' ability to treat the BOCs' ICS bills as part of the exchange carrier settlement process clearly arises because the BOCs are treating the bills of their ICS operations as their own, a phenomenon only possible because the ICS services have not been separated out. The Commission must rectify this error by making clear that the BOCs must give equal treatment to independent ICS provider bills.

Alternatively, the Commission could require that the BOCs forward independent ICS provider calls to CLECs for processing in the same fashion as the BOCs' own calls, subject of course to the same billing and collection fees. In the long term, the Commission could rectifying the situation by requiring that LIDB be updated to return a carrier code in response to validation inquiries.

CONCLUSION

Section 276 requires that the Commission ensure ICS providers are fairly compensated for each and every call made from their equipment. To carry out this mandate in light of state-imposed rate ceilings on local inmate collect calls that prevent ICS providers from recovering the unique costs of providing ICS, the Commission should either (1) deregulate inmate calling rates or (2) prescribe a $.90 federal compensation element to be added to existing state rates where a ceiling is in place.

Section 276 also requires that the Commission must establish safeguards necessary to ensure an end to the subsidization of BOC inmate operations and the BOCs' discrimination against independent providers. In order to do so, the Commission must first correctly define ICS to include the service itself—along with the associated revenue and costs—rather than merely the underlying equipment. Then the Commission must put into place the specific protective measures outlined above.

Dated: June 21, 1999

Respectfully submitted,

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Washington, D.C. 20037-1526
(202)785-9700
Attorneys for the Inmate Calling Service Providers Coalition

By: /s/ Albert H. Kramer
Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber

EXHIBIT 1

EXECUTIVE SUMMARY

Bell Atlantic-Virginia Inc. is pleased to respond to the request for proposal #2-98 to provide inmate telephone service for the New River Valley Regional Jail. Bell Atlantic will be teaming with T-NETIX, Inc. and AT&T to provide the highest quality inmate telephone system and service available in the telecommunications industry. Acceptance of this bid will ensure the facility of a trouble free, revenue producing communication system.

New River Valley Regional Jail Objectives

The New River Valley Regional Jails' request for proposal has stated that the major objectives are:

- ☐ Require the least maintenance and impact on facility staff.
- ☐ Provide the most technically advanced equipment and devices.
- ☐ Be supported by an administrative team with a "quick response" track record and a cooperative attitude.

Bell Atlantic's Proposal

As the prime contractor on this bid, Bell Atlantic will work with our sub-contractors to provide seamless service to the New River Valley Regional Jail. Bell Atlantic will be your single point of contact for ALL of the inmate phone services for the facility. Bell Atlantic will install the Phillips and Brooks GO-5010 mini inmate telephone set for the use of the inmates within the facility.

T-NETIX, Inc. will provide and maintain the inmate call control system. T-NETIX provides specialized call processing and fraud control services. Its customers use the company's products and services to provide over 90,000,000 billable inmate collect calls per year in over 1,000 correctional institutions. The T-NETIX network center in Denver Colorado provides around-the-clock systems support and on-line, real-time diagnostic administration.

The inmate calling service platform operates on Windows NT, *the familiar, easy to use point and click technology* that works with IBM compatible hardware. Jail personnel will find this to be much more user friendly and easier to learn than the out-moded technology of a DOS based system. The main server database, which is Oracle-based, provides fast, flexible operations with a high level of security and data integrity.

At the close of the calendar month all data, as described above, are retrieved and totaled by the Commission System. The Commission System applies the predetermined commission percentage. A check is generated each month and forwarded to our Check Printing Center for distribution to the customer.

AT&T will accumulate all non-cash billing data from all public and inmate telephones in the Jail. This data is captured by telephone number and stored on tape for transmission at the end of each month to the commission system.

G. *The vendor shall directly handle all complaints from the parties called by the inmate. Provide a copy of a sample page from a customer's bill showing how the calls are billed.*

Bell Atlantic Response:

The Bell Atlantic Team will handle all complaints from parties called by the inmates. Please see a copy of Bell Atlantic's customer telephone bill in Appendix XIV.

H. *Provide Uncollectibles history with local telephone companies and describe how your company limits Uncollectibles.*

Bell Atlantic Response:

As the largest local telephone company in Virginia there is no uncollectable history to provide.

I. *The vendor shall be responsible for all costs associated with the inmate telephone system, including purchase, installation, service, maintenance, and operation. The facility shall bear no responsibility for any costs pertaining to the system.*

Bell Atlantic Response:

Bell Atlantic will be responsible for all costs associated with the inmate telephone system, including purchase, installation, service, maintenance and operation. The New River Valley Regional Jail will bear no responsibility for any costs pertaining to the system.

EXHIBIT 2

COPY Milwaukee County

APPENDIX B

COMMISSION RATES

Provide the Commission rate (Percent of Gross Revenue) that the Commission will be based on for the following types of calls:

	COMMISSION RATE	PER CALL COMPENSATION
LOCAL CALLS:	See options below	
INTRALATA CALLS:	See options below	
INTERLATA CALLS:		
INTERNATIONAL:		

MCI/WorldCom is currently providing long distance service at the M.C. Jail and House of Corrections and has not paid Per Call Compensation (PCC) to Ameritech. In lieu of this situation Ameritech has provided a more aggressive percentage of revenue to maximize commissions to Milwaukee County.

*NOTES:

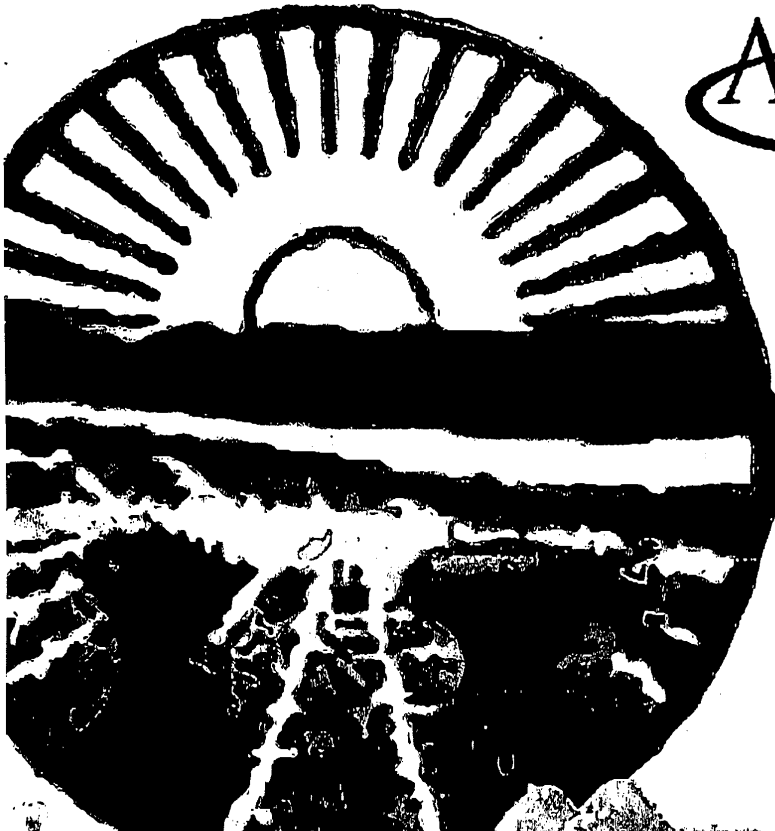
1. The above Commission rate should be based on a three (3) year Agreement.
2. Show sample method of computation for all types of calls including station-to-station and person-to-person.
3. List, in detail, any types of calls or circumstances that will not generate Commission to M.C. Any types of calls not included, present or future, will be construed as calls generating commission to M.C. at the rate specified in Appendix B and for term of the M.C. Agreement for this service.

Commission Options

A)
- **54.2% commission on gross revenue for all local and IntraLATA calls.**
- **$300,000 signing bonus at execution of service agreement.**
- **$100,000 annual bonus for year 2 and year 3 of service agreement.**
- **Advanced commission paid up to $1,000,000.**
- **Minimum annual guarantee of $2,000,000.**
- **If M.C. exercises its option to renew service agreement in year 4 and year 5 a $100,000 signing bonus will be paid each year.**

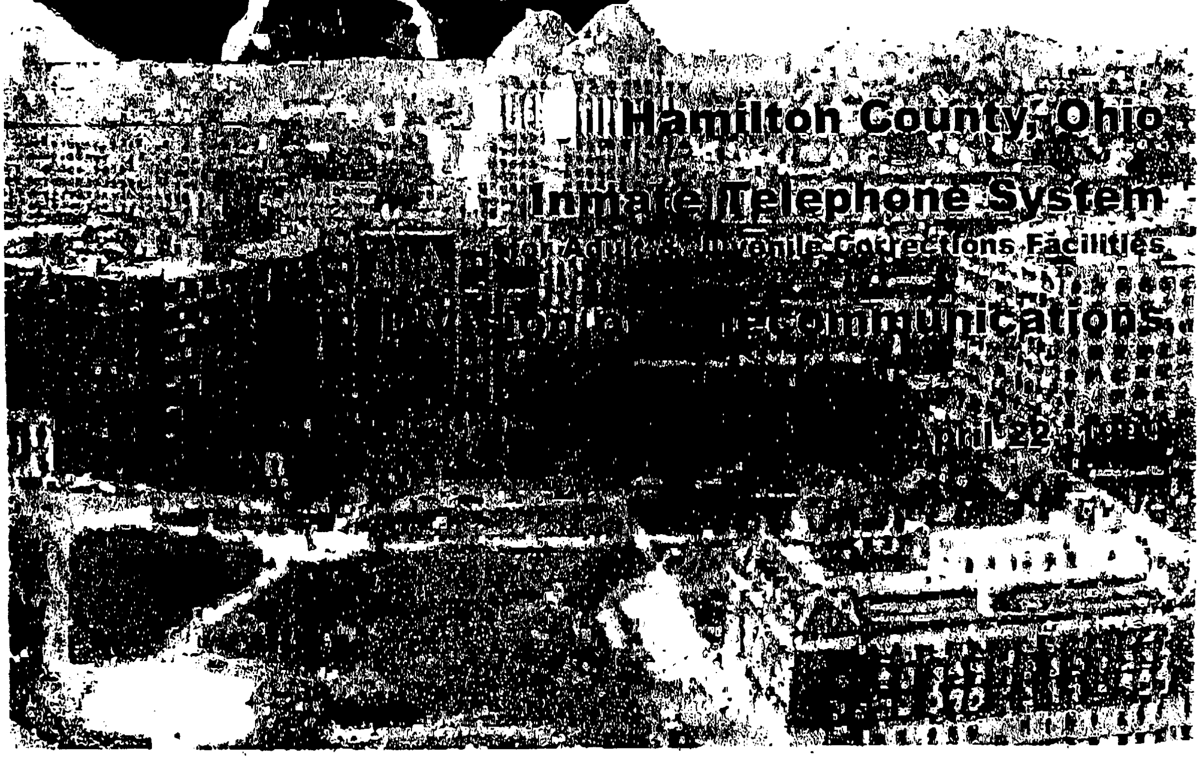
B)
- **53.2% commission on gross revenue for all local and IntraLATA calls.**
- **$500,000 signing bonus at execution of service agreement.**
- **Advanced commission paid up to $1,000,000.**
- **Minimum annual guarantee of $2,000,000.**
- **If M.C. exercises its option to renew service agreement in year 4 and year 5 a $100,000 signing bonus will be paid each year.**

Ameritech



AMERITECH
PAY PHONE
SERVICES

REQUEST FOR PROPOSAL



Section 3
Request for Proposal – Inmate Phones

Hamilton County has approximately 233 Inmate Telephones, located in 4 separate facilities; Justice Center, Queensgate Correctional, Juvenile Detention, Talbert House.

Call statistics for all of 1998 are as follows:

	Local Calls	Local Minutes	Intralata Calls	Intralata Minutes
TOTAL	1,209,800	17,920,166	9,484	139,828

Interlata calls for three months are as follows:

October, 1998	6,186 interlata calls	97/507 Minutes
November, 1998	6,157 interlata calls	58,112 Minutes
December, 1998	6,813 interlata calls	68,018 Minutes

The length of the resulting contract should be for 3 years with 2, 1 year each renewables for a total of 5 years.

Hamilton County wants no commission rate per call. Instead, we desire a flat rate per year, each year paid up front, to allow your company to place and manage an inmate phone system in our facilities. We will set the allowed local charge per call. We need to have your company state the annual flat rate based on local calling charges as stated below and the above long distance call volume.

If is very desirable, but not mandatory, for the County to have the three years paid up front.

Per year flat rate for entire system, if local calls are:

$1.25	$1,200,000.00	= 5 Year Total of	$ $6,000,000.00
$1.50	$1,300,000.00	= 5 Year Total of	$ $6,500,000.00
$1.75	$1,400,000.00	= 5 Year Total of	$ $7,000,000.00
$2.00	$1,500,000.00	= 5 Year Total of	$ $7,500,000.00
$2.25	$1,800,000.00	= 5 Year Total of	$ $9,000,000.00
$2.50	$2,000,000.00	= 5 Year Total of	$ $10,000,000.00

Are you able and willing to pay the entire 3 years upfront? **YES, Ameritech will comply with a 3 year up front payment.**

County of Hamilton

TOM NEYER, JR.
COMMISSIONER
PRESIDENT OF THE BOARD
PHONE (513) 946-4409

JOHN S. DOWLIN
COMMISSIONER
VICE PRESIDENT
PHONE (513) 946-4405

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COMMISSIONER
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OFFICE OF THE
BOARD OF COUNTY COMMISSIONERS
COUNTY ADMINISTRATION BUILDING
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ADMINISTRATOR
PHONE (513) 946-4420

JACQUELINE PANIOTO
CLERK OF THE BOARD
PHONE (513) 946-4414

Global Tel Link
2609 Cameron Street
Mobile, AL 36607
ATTN: Angela Salter

Dear Sir or Madam:

Thank you for your proposal in response to legal bid # 99168 – Inmate Telephone System. We are recommending to our Board of County Commissioners that this bid be awarded to the contractor /contractors listed below:

Ameritech

Attached for your reference is a copy of the bid tabulation for this bid.

Your participation in the legal bid process helps Hamilton County insure that we are obtaining the best prices and products available.

If a bid bond was submitted in the form of a check you will find it attached to this letter.

If you are awarded the bid partially or in it's entirety you will receive a purchase order from Hamilton County confirming this transaction.

Any questions regarding this bid should be directed to Amy Hoh at 946-4314.

Sincerely,

Amy B. Hoh

Amy B. Hoh
Purchasing Director

BID EVALUATION FORM

Date:4/26/99 Legal bid #99168 – Inmate Telephone System Number of successful bids received 4

Item #	Description	Vendor	Vendor	Vendor	Vendor	Vendor	Award to
[redacted]	Vendor's Name>>>>>>>>>>>>>>>	Cincinnati Bell	Ameritech	Evercom	Global Tel-Link		
	Vendor Contact>>>>>>>>>>>>>>	Cathie Engle	Mark Minnich	Tim Parsons	Angela Salter		
	Call Rate	$1.25	$1.25	$1.25	$1.25		
	Annual Payment	$411,000.00	$1,200,000.00	$1,055,000.00	40.5% - gross rev		
	5 Year Annual Total	$2,055,000.00	$6,000,000.00	$5,275,000.00			
	Call Rate	$1.50	$1.50	$1.50	42% - gross		
	Annual Payment	$582,110.00	$1,300,000.00	$1,190,000.00			
	5 year Annual Total	$2,910,550.00	$6,500,000.00	$5,950,000.00			
	Call Rate	$1.75	$1.75	$1.75	43.5%- gross rev		
	Annual Payment	$781,000.00	$1,400,000.00	$1,325,000.00			
	5 Year Annual Total	$3,905,500.00	$7,000,000.00	$6,625,000.00			
	Call Rate	$2.00	$2.00	$2.00	45% - gross rev		
	Annual Payment	$1,007,614.00	$1,500,000.00	$1,460,000.00			
	5 Year Annual Total	$5,038,070.00	$7,500,000.00	$7,300,000.00			
	Call Rate	$2.25	$2.25	$2.25	46.5% - gross rev		
	Annual Payment	$1,261,651.00	$1,800,000.00	$1,600,000.00			
	5 Year Annual Total	$6,308,255.00	$9,000,000.00	$8,000,000.00			
	Call Rate	$2.50	$2.50	$2.50	48% - gross rev.		
	Annual Payment	$1,371,743.00	$2,000,000.00	$1,730,000.00			
	5 Year Annual Payments	$6,858,715.00	$10,000,000.00	$8,650,000.00			

Please specify your reasons for selecting your vendor or vendors for this bid. Check all that apply.

Highest
Lowest Price — yes
Best Product — yes
This product suits our specific need. ✓ yes
Other Please elaborate below:

Please return bid bond checks Yes No Require performance bond in the amount of ____________

Signature: [signature] 595-8448

Date Signed: 5-10-99

PLEASE RETURN THIS FOR TO THE HAMILTON COUNTY PURCHASING DEPARTMENT ALONG WITH ANY SUPPORTING DOCUMENTATION FOR YOUR DECISION.

Please let me know when I should start contract discussions.

Bell Atlantic

Massachusetts
Department of Correction

Inmate Calling System
Vendor Review

Request for Additional
Clarification

December 2, 1998

AMENDED COST TABLE 1.0
COLLECT ONLY COMMISSION FEE SCHEDULE

The following stated percentage is the figure used to calculate the monthly Commission paid to the Commonwealth of Massachusetts for all accepted 1 telephone calls placed through the Inmate Calling System. This percentage will be based on monthly Gross Revenue 2 attributed to the Inmate Calling System for all local, intra-LATA, inter-LATA and International calling traffic.

In addition, the Bidder must quote the per call surcharge associated with collect calls within Massachusetts and collect calls outside of Massachusetts. The maximum per call surcharge allowed by the DOC for collect calls within Massachusetts is $1.50.

All portions of Section 7.0 including sub-section 7.2 have been read in its entirety and agreed to full.

Proposed Monthly Commission Percentage:	**42% with Dictaphone equipment or** **40% with Schlumberger equipment**
Proposed Per Call Surcharge Rate: **(Within Massachusetts)**	**Bell Atlantic intraLATA calls: $ .86** **AT&T: intrastate interLATA calls (only calls to 413 area code): $1.50**
Proposed Per Call Surcharge Rate: (Outside Massachusetts)	**AT&T calls: $3.00**

All commissions will be paid as defined in Section 5.4.8

Bell Atlantic agrees to continue billing all called parties the per call surcharge of $0.86 on all local, intraLATA calls. At this time Bell Atlantic has no immediate plans to change that rate. If, during the life of the contract, changes in either business or regulatory requirements necessitate rate changes, Bell Atlantic will inform the DOC prior to any such changes.

1 Accepted calls are defined as those inmate collect calls positively approved by the called party either through the use of Touch Tone signal or voice statement.
2 Gross Revenue is defined as all accepted collect calls placed through the Inmate Calling System without exception. No deduction for fraudulent, uncollectible or unbillable calls is allowed.

Bell Atlantic Bid No.2

Bell Atlantic

PROPOSAL FOR

INMATE TELEPHONE SYSTEM

FOR

THE NEW RIVER VALLEY REGIONAL JAIL

3. *"Statement of Accuracy" signed by an Authorized Representative of the provider.*

Bell Atlantic Response:

Bell Atlantic's monthly commission statement includes all of the information that New River Valley Regional Jail is requesting and more. Please see Appendix IX for a sample of Bell Atlantic's monthly commission statement.

E. *Commission payments due to the facility shall be paid monthly with the first commission check paid by the end of the first month revenues are received for the calls billed.*

Bell Atlantic Response:

The New River Valley Regional Jail will receive commission checks from Bell Atlantic by the end of the month succeeding the month in which the call is billed to the customer. For the first two months, this check will encompass commissions on all local and intraLATA toll calls.

Commissions on interLATA calls will be paid approximately two months in arrears. Bell Atlantic will adjust for this by projecting the first two months commissions and pay this projected amount to the Jail in advance of receiving data from our long distance company.

F. *Failure to pay the facility commissions of a regular, monthly basis shall be grounds for the facility to cancel, without penalty, any agreement executed pursuant to this RFP.*

Bell Atlantic Response:

Acknowledge and agree

G. *Provide a complete schedule of commissions offered pursuant to this RFP. Indicate what call traffic your company is authorized to handle, how such traffic will be billed, and the commission that will be paid on that call traffic. Define "percentage" in each case (i.e., % of Gross Billable Revenue, Gross Revenue Received, Net, etc.).*

Bell Atlantic Response:

Bell Atlantic's commissions will be "based on 43 percent (43%) of all customer billed revenues (CBR). CBR is defined as all charges for originating inmate collect calls accepted by and billed to the customer, without deduction for fraudulent or uncollectible calls. Bell Atlantic shall not apply any facility surcharges to the cost of a call to cover these items."

H. *Provide your company's monthly average bad debt percentages for the last 24 months from the major telephone companies serving Virginia.*

Bell Atlantic Response:

As the major telephone company of Virginia there is no bad debt percentage to provide.

Santa Clara County [illegible]

2. Please present an example of how commissions are calculated.

PACIFIC BELL PROPOSAL EFFECTIVE COMMISSION RATE

Revenue/Commission Payment
Example Only

	IntraLATA	InterLATA
Monthly Revenue per Phone	$500	$100
Stated Commission Rate	41%	50%
Gross Commission Payment	$205	$50
*Management Services Fee	NONE	NONE
*Service/Maintenance Fees (e.g. line charges, fraud expense, etc.)	NONE	NONE
Net Commission Payment	$205	$50
Effective Commission rate	41%	50%

Total Commission Payment **$255**
Combined Commission Percent **42.5%****

WHAT YOU SEE IS WHAT YOU GET!

** Note: Some companies deduct these fees before paying their commissions. This may result in a lower Effective Commission rate when compared to the Stated Commission rate.*

*** Percent does NOT include the worth of the Value-Added features.*

BELLSOUTH

BellSouth Public Communications, Inc. 205 943-2808
Room 100
75 Bagby Drive
Homewood, Alabama 35209

Walter R. Vandett
Vice President - Sales

November 7, 1997

Mr. James A. Waller, Jr., CPPO
Purchasing Agent
Room 607
City Hall Bldg.
810 Union St.
Norfolk, VA 23510

Dear Mr. Waller:

On behalf of BellSouth Public Communications, Inc., I would like to thank you for the opportunity to present our proposal for the installation and operation of inmate telephone service for City of Norfolk, VA.

Enclosed you will find a proposal for BellSouth MAX Service, a state-of the-art enhanced inmate telephone system. The BellSouth MAX performs call processing normally associated with intelligent inmate phone features such as: number blocking, call limits, time of day access, PIN access PIN control of numbers, three way call detection IXC call routing, SMDR call history, automated operator functions and many other call management features.

BellSouth Public Communications, Inc. has met all requirements of the 1996 Telecommunicaitons Reform Act regarding pay telephone service. We are now a Total service provider, offering a single package source for your inmate service needs. BellSouth's outstanding service record and professional dedicated personnel are additional reasons to consider our company as your inmate service provider.

Please feel free to contact me or Terry Jackson, your Account Executive, if you have any questions. I can be reached at 205-943-2808. Terry's number is 803-329-9683.

Sincerely,

Walter R. Vandett

stations, either individually, in groupings, by block, by floor or for the entire system as a whole. Using PIN technology, the times of telephone usage of individual inmates may be restricted. Inmates may be further restricted in placing calls to designated parties by day of the week and time of day.

Read and Agreed

W. **Year 2000 Compliance**
All hardware, software and systems provided shall be year 2000 compliant.

Read and Agreed

2. **Fees and Charges**

Local calls and intra-lata call charges shall not exceed that of the local telephone company(currently set at one dollar). If the local call and intra-lata fees should change, the inmate telephone system fee may change accordingly. Inter-lata charges will not exceed the rate for calls originating from the City complex. Neither the Sheriff nor the City shall be responsible for any non-collectible revenue. Offeror must state any applicable surcharges in detail. Neither the Sheriff nor the City shall be responsible for any charges incurred due to toll fraud. The Offeror shall be responsible for all costs associated with the inmate telephone system, including purchase, installation, service, maintenance and operation. Neither the Sheriff nor the City shall bear any responsibility for costs pertaining to the system, including bad debt charges. Offeror shall assume responsibility and liability for hardware and/or software upgrades and failures.

The Offeror shall agree that all uncompleted or unanswered calls will not be charged to the called party. Completion can only be achieved when positive acceptance is received.

Read and Agreed

See Attached General Services Tariff S. C. C.-Va.-No. 203 for local service
See Attached General Services Tariff S. C. C.-Va.-No. 209 for intra/inter-lata service

cost of local call $1.05 $.35 for call and $.75 for surcharge

cost of 3 minute daytime intralata call in first mileage band is $2.00
$.45 for call and $1.55 surcharge

cost of 3 minute daytime interlata call in first mileage band is $2.91
$.66 for call and $2.25 surcharge

3. **Commissions**
A. BellSouth Public Communications, Inc. will pay a commission rate of **43%** based on "gross billable revenue" which means 100% of the charges for inmate calls without deduction for line charges, repair charges, discounts or uncollectibles.

BELLSOUTH TELECOMMUNICATIONS, INC.
INMATE TELEPHONE SERVICE AGREEMENT
(WITH CPE)

This Inmate Telephone Service Agreement ("Agreement") is made by and between BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company, and South Central Bell Telephone Company, having its principal place of business at 675 West Peachtree Street, Atlanta, Georgia ("the Company"), and Mecklenburg County Sheriff's Department, having its principal place of business at, 700 E. 4th Street, Charlotte, N. C. ("Facility Administrator").

I. Term of Contract - This Agreement shall be in effect until December 4, 1998, commencing from the date of execution below. An option is hereby granted to extend the terms of the contract for one (1) two-year period upon written notice, by the Sheriff, within ten days of taking the oath of office on or about December 2, 1998. Such notice will be sent to the address set forth in Section VII ("Notices"). Following the duration of the original term and any renewal period(s), this Agreement shall be extended month to month until 30 days written notice is provided by either party.

II. Material - This Agreement applies to the provision of space by the Facility Administrator for the installation, operation and maintenance of inmate telephones, enclosures, and associated equipment furnished by the Company, whether existing, newly installed, or renovated, located at all existing and any future locations owned, operated or managed by the Facility Administrator. The term "Material" is defined herein as the inmate telephone set and enclosure (if any), including but not limited to inmate operating equipment, site preparation, and customer premises equipment leased by the Facility Administrator for use in connection with Company's offering of Inmate Telephone Service. Where telephone sets, enclosures, inmate operating equipment, or other property of Company are installed upon the premises owned, leased or otherwise under the supervision of Facility Administrator, such property shall remain in all respects that of the Company. The Company reserves the right to remove or relocate Material which is subjected to recurring vandalism or insufficient local and intraLATA traffic, carried by the Company, to warrant the continuation of service. Such a right of removal or relocation shall not be exercised unreasonably by the Company. The Company will notify the Facility Administrator in writing of its intention to remove or relocate at least thirty (30) days prior to such action. Upon removal of Material by the Company, the Company shall restore said premise to its original condition, ordinary wear and tear excepted.

However, the Company shall not be liable for holes placed in walls, pillars, or floors or other conditions on the premises which resulted from the proper installation of Material described herein.

III. **Alterations and Attachments** - Facility Administrator may not make alterations or place any attachments to Material provided by the Company under this Agreement unless agreed in writing by Company.

IV. **Remuneration** - The Company will install, operate and maintain all Material at no charge to Facility Administrator except as stated below. The Company will pay Facility Administrator, for space provided for the installation and operation of Material, remuneration based on 46% of BellSouth local and intraLATA toll money in the box and 46% of BellSouth 0+ and 0- dialed local and IntraLATA toll billed revenues. The Company will pay to the Location Provider $1,200.00 per month. The Company will provide Facility Administrator with remuneration on a monthly basis or other, commencing with the first collection and/or settlement period following the date of execution below. Such remuneration and compensation will be sent to the address designated by Facility Administrator.

Facility Administrator agrees that all charges and remuneration policies are subject to change as required by the applicable Public Service Commission or any other regulatory or judicial body with authority to mandate such changes, and that at no time shall any charge or remuneration policy differ from that allowed by any regulation or tariff of the applicable Public Service Commission or other such body whether such regulation or tariff is currently in existence or is hereafter made known.

a. It is further understood that in the event any changes or modifications in any laws, rules, regulations, or tariffs materially alter the rights or obligations of either party hereunder, either party may, upon thirty (30) days written notice, terminate this Agreement.

b. Facility Administrator further agrees to cooperate with Company to assist in any reasonable way to assure compliance with all laws, rules and regulations, federal, state and local requirements, including but not limited to, handicapped requirements. To the extent Company makes alterations, furnishes devices, or in any other ways provides for compliance with such requirements, any additional expenditures occasioned by costs of such compliance shall be reimbursed by Facility Administrator or deducted from Remuneration, otherwise payable under this Agreement, at Company's option.